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DATE: May 28, 1992  
CASE NO. 91-ERA-00054

IN THE MATTER OF

DAVID L. LATSHAW,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT .

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER OF DISMISSAL

Before me for review is the Recommended Order of Dismissal (R.O.) issued by the Administrative Law Judge (ALJ) on April 27, 1992, in this case arising under the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. 5851 (1988). The ALJ recommends dismissal of the case without prejudice based on the Stipulation of Voluntary Dismissal submitted by the parties. The ALJ notes that both parties are proceeding with the advice of counsel and that both expressly agree to dismissal with each party paying its own costs and legal expenses. Additionally, the ALJ ordered that this dismissal is subject to the rulings from his April 3, 1992, Order on Respondent's Motion for Partial Summary judgment.

I agree with the ALJ's conclusion that the complaints in this case should be dismissed pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. 1/ See *Kleiman v. Florida Power and Light Co.*, Case. No. 91-ERA-00050, Sec. Final Order of Dismissal, Feb. 21, 1992. The parties have

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expressly chosen to have the complaints dismissed "without prejudice, notwithstanding Administrative Law Judge Kichuk's Order on Respondent's Motion for Partial Summary Judgment." I interpret this request as one for

unconditional dismissal, without regard for the ALJIs rulings on the motion. Thus, the ALJ's rulings from the April 3, 1992, Order on Respondent's Motion for Partial Summary Judgment are without force or effect, should not have been included in the R.O., and are not a condition of this dismissal.

Accordingly, pursuant to Rule 41(a)(1)(ii), the complaints in this case are DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

LYNN MARTIN  
Secretary of Labor

Washington, D. C.

1/ This case arose from Complainant's September 5, 1991, request for a hearing regarding two complaints -- one filed on December 5, 1990, and another filed on May 31, 1991.